

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**DANA M WOOTEN**  
Claimant

**APPEAL NO: 18A-UI-02192-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HIGBEE WEST MAIN LP**  
Employer

**OC: 01/21/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 8, 2018, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 14, 2018. The claimant participated in the hearing. Bridget Miller, Store Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time sales associate for Higbee West Main (Dillards) from May 28, 2007 to January 19, 2018. She was discharged for attendance and production issues.

Between May 30 and October 28, 2017, the claimant accumulated 26 occurrences of tardiness and received a written warning for tardiness October 30, 2017. The warning stated the next step would be further disciplinary action up to and including termination.

On October 3, 2017, the claimant received a written warning for having her cell phone on the sales floor. On December 15, 2017, the claimant received a written warning for below standard selling.

On January 17, 2018, the claimant left for her break at 5:00 p.m. to return at 6:00 p.m. but did not return. The claimant told her manager her son was sick and she would not be back after her meal break.

The claimant was not scheduled January 18, 2018, and her employment was terminated January 19, 2018.

The claimant knew her job was in jeopardy but believed it was due to her sales goal numbers rather than for attendance.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant did have several instances of tardiness between May 30 and October 28, 2017, the employer did not cite any further incidents of absenteeism between October 29, 2017 and January 16, 2018. The claimant's last absence was due to the illness of her child January 17, 2018, and she asked for and was granted permission to leave following her lunch break.

The claimant's sales goals may have been suffering, however, failure to perform to the employer's expectations, when making a good faith effort to do so, is not misconduct.

Under these circumstances, neither the claimant's attendance nor her sales numbers rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits must be allowed.

**DECISION:**

The February 8, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn